IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1013 of 2001

in

SPECIAL CIVIL APPLICATIONNo 7912 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

HASMUKHBHAI JADAVBHAI BUTANI

Appearance:

1. LETTERS PATENT APPEAL No. 1013 of 2001

MR H H Patel, AGP for Appellant No.

..... for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.P.BUCH

Date of decision: 26/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

In this appeal, the judgment delivered in Special Civil Application No.7912/2000 has been challenged. The Learned Single Judge has upheld the award passed by the Labour Court, Amreli in Reference Case No.139/44 by virtue of the said judgment.

2. Learned AGP Mr H H Patel appearing for the appellant employer has submitted that the Labour Court had materially erred in giving direction to reinstate the respondent workman. According to him the respondent workman ought not to have been paid backwages because the respondent-workman had approached the Labour Court at a belated stage.

3. On perusal of the award and the judgment delivered by the learned Single Judge, it is very clear that while retrenching the respondent-workman, provisions of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') had not been followed. No seniority list was maintained by the appellant-employer. Moreover, persons junior to the respondent-workman had been continued in service and amount payable to the respondent-workman by way of retrenchment compensation under the Act had not been paid. Looking to the said fact, in our opinion, the reinstatement cannot be said to be illegal.

4. So far as the delay in approaching the Labour Court is concerned, the Labour Court had duly considered the said fact and though the respondent-workman was illegally retrenched in the year 1985, backwages were not awarded with effect from the date from which he was retrenched, but backwages have been awarded from the date when he had initiated proceedings against the appellant-employer. The Labour Court has directed that backwages should be paid with effect from 2.7.1993 as the respondent-workman had initiated proceedings on that day. In our opinion, the Labour Court was justified in awarding backwages w.e.f. 2.7.1993.

5. The learned Single Judge has considered the above referred factors and has rightly rejected the petition. In our opinion, the order passed by the learned Single Judge is just and proper. In the circumstances, the appeal is dismissed with no order as to costs.

26.9.2001 [A R Dave, J.]

[D P Buch, J.]

msp